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No. 81-2135

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

UNIROYAL, INC.,

Petitioner,

v.

ALTA CHRAPLIWY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Petitioner, Uniroyal, Inc. (hereinafter referred to as "Uniroyal"), submits this supplemental brief pursuant to Rule 22.6 of the Rules of this Court to discuss the significance of this Court's decision in *Hensley* v. *Eckerhart*, 51 U.S.L.W. 4552 (1983), to the issues raised in the pending petition for certiorari in this case.

In *Hensley*, this Court held that under 42 U.S.C. § 1988 a prevailing party may not recover attorneys' fees for time expended in support of unsuccessful claims which are factually or legally distinct from the claims upon which the party prevailed. Contrary to the assertions of Respondents, this Court's analysis in *Hensley* supports each of the arguments propounded by Uniroyal in its petition for certiorari seeking review of the decision of the Seventh Circuit below.

After noting that "[i]n some cases a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories," the Court held that "these unrelated claims [must] be treated as if they had been raised in separate lawsuits" for the purpose of limiting fee awards to prevailing parties. 51 U.S.L.W. at 4555. If different claims for relief that are based on different legal theories within a single lawsuit must be separated before applying any attorneys' fee paradigm, then, *a fortiori*, claims which are initially brought as separate lawsuits or administrative actions must also be individually scrutinized before attorneys' fees can be awarded to a prevailing party. It follows in accordance with the Court's reaffirmation of the "American Rule" that each such claim must have its own express statutory authorization in order for the district court to award attorneys' fees. As the District Court held below, and Respondents do not deny, none of the separate collateral actions for which fees are sought in this case was brought pursuant to any statute authorizing an award of attorneys' fees to either party.[1] To award fees for time expended in these actions would be inconsistent with the reasoning of *Hensley*.

Significantly, the *Hensley* decision rejected the argument that a less stringent standard should apply in civil rights cases. Additionally, the Court rejected the notion that fees should be awarded for all time spent prosecuting any claim which in any way contributed to the results achieved. 51 U.S.L.W. at 4554. This is precisely the standard which the

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[1] The separate collateral actions include all claims which did not arise under Title VII, i.e., *Chrapliwy* v. *Dunlop*, No. 75-1705 (D.D.C. 1975); *OFCCP* v. *Uniroyal, Inc.*, No. 1977-1; *Uniroyal, Inc.* v. *Marshall*, ___ F. Supp. ___, 20 Fair Empl. Prac. Cas. (BNA) 477 (N.D. Ind. 1977); *Uniroyal, Inc.* v. *Marshall*, 482 F. Supp. 364 (D.D.C. 1979); *Chrapliwy* v. *Marshall*, Case No. 79-1647 (D.D.C. 1979).

Seventh Circuit erroneously applied in reversing the District Court and awarding fees for the collateral actions.[2]

With respect to the hourly rates awarded by the District Court below, the *Hensley* decision also supports Uniroyal's contention that the issue of appropriate billing rates is a matter properly left to the district court's discretion. The Court held:

> We reemphasize that the district court has discretion in determining the amount of the fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters.

51 U.S.L.W. at 4556.[3]

Here the Seventh Circuit clearly encroached upon the District Court's discretionary domain by making its own independent findings regarding the hourly billing rates allowable for this litigation. This intrusion was unwarranted since the District Court's fee award of over $833,000

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[2] Specifically, the Seventh Circuit held that "Section 706(k) should be interpreted as allowing attorneys' fees to the prevailing plaintiffs for services which contribute to the ultimate termination of Title VII actions." Appendix at A-13.

[3] *See also* the dissenting opinion wherein Justice Brennan stated, "Evaluation of the interrelatedness of several claims within a single lawsuit, and of the legal work done on those claims, is most appropriately a task for the district court that heard and decided the case. . . . Congress having delegated responsibility for setting a 'reasonable' attorney's fee to the court that tried the case, reviewing courts, as a matter of good judicial policy, should not disturb the trial court's solution of the problem of balancing the many factors involved unless the end product falls outside of a rough 'zone of reasonableness,' or unless the explanation articulated is patently inadequate." 51 U.S.L.W. at 4560, n.11.

was well within the range of reasonableness and the District Court articulated an adequate explanation for its selection of local, rather than out of town, billing rates.[4]

Thus, the reasoning of *Hensley* is contrary to the Seventh Circuit's analysis of both issues now raised before this Court. Rather, the *Hensley* decision supports the approach taken by the District Court below in assessing the proper fee award in this case. Therefore, and for the reasons previously articulated, Uniroyal respectfully submits that the Seventh Circuit erred in reviewing the District Court's award and that this Court should grant certiorari in the instant case.

Respectfully submitted,

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[4] Indeed, as Uniroyal has stated in a prior supplemental brief, the District Court's choice was consistent with the analysis adopted by other courts faced with the same balancing problem. *Donnell* v. *United States*, 682 F.2d 240 (D.C. Cir. 1982), *petition for cert. pending* (No. 82-915).